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Bcc: []
From: CN=Dave Moon/OU=R8/O=USEPA/C=US
Sent: Fri 1/6/2012 8:00:32 PM
Subject: Re: have to put together something on MT's approach to nutreints

Here's some more stuff:

Senate Bill 367 was signed by Governor on April 21, 2011 and is now a state statute (Montana Code Annotated Section 75-5-313).

- MT's draft criteria for wadeable streams are low (TP 0.025-0.130 mg/L and TN 0.250-1.100).
- SB 367 authorizes individual, general and alternative variances. Under a general variance, permit limits would be established at 1 mg/l TP and 10 mg/l TN for facilities discharging > 1 MGD or 2 mg/l TP and 15 mg/l TN for facilities discharging < 1 MGD. Lagoons would be capped at their current load. The statute specifies that the limits will be re-evaluated in 2016.
- SB 367 has no regulatory effect until the State adopts numeric nutrient criteria.
- The State's rulemaking efforts are scheduled to begin in Summer/Fall 2012.
- Montana and EPA have been working closely together on the details of the State's variance process. Efforts have focused on addressing the following 2 questions:
 1. Can a state-wide variance from MT draft nutrient numeric criteria be supported based on a demonstration of Substantial and Widespread (S&W) economic impacts?
 2. What nutrient requirements should apply while the variance is in effect?

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From: "Johnson, Sarah E." <Sarah.Johnson@dphe.state.co.us>
To: Dave Moon/R8/USEPA/US@EPA
Date: 01/06/2012 12:05 PM
Subject: have to put together something on MT's approach to nutreints

This is what I put together last week – now the question is coming from Chris U
Could you take a look at this and see if 1) I got it right, and 2) if you can augment it

Thanks
S

The Montana approach relies on water quality standards with a "Statewide Variance" for domestic facilities that will be granted by state law. The variances would be in effect for 20 yrs

Size of Facility	Total Phosphorus (mg/L)	Total Nitrogen (mg/L)
>1 MGD 1	10	
<1 MGD 2	15	

Existing lagoons
maintained

Limits do not apply unless plant is expanded as long as existing performance is

The WQ standards that MT has floated so far are more restrictive than ours (closer to background levels).

I believe that the EPA's preference of MT's approach over CO's is essentially legal/bureaucratic rather than environmental, having to do with defensibility of these approaches were they to be adopted in more....litigious states.

Under the CO approach, permits would not have limits in them that protect uses – In the same rulemaking we are establishing the default protective numbers upon which permits could be based, but we are choosing not to use them. Instead we are adding tech-based numbers that are way less stringent. From a legal/bureaucratic standpoint, this is a vulnerability. In a state with more aggressive environmental entities – that would be a liability. People could sue EPA and EPA would lose. Also, under the CO approach, the values don't get used for 303(d) listing purposes for quite a while. EPA's duty to list waters that are impaired (if the state fails to do so) is a MANDATORY Duty. Its duty to veto permits isn't mandatory.

Under the MT approach, permits would have the cover of a variance that is a valid legal/bureaucratic way to side-step the WQ based effluent limit. There are some legal vulnerabilities with this approach as well, but perhaps more obscure and more defensible for EPA. Also, since the WQ standards will be in place, the 303(d) listing issue won't fall on EPA.